

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BENYAMIN HAWTHORNE,

Defendants.

4:09CR3069

MEMORANDUM AND ORDER

Mr. Hawthorne has filed a motion for reduction of his sentence related to crack cocaine under the *First Step Act*. I assume, but do not decide, that he is eligible¹ for a reduction as to the crack sentence but, obviously, not the mandatory consecutive sentence for the gun charge. With a previous reduction in his sentence for the crack offense from 135 months to 120 months², the defendant is now serving a 120-month sentence for the crack conviction plus a mandatory consecutive sentence of 60 months for the gun conviction.

As the government points out in its brief, at the time of sentencing I observed:

He was the major source of supply for a huge – a whole lot of crack cocaine. Who knows how much?

¹ See Filing no. 254, Revised 2019 *First Step Act* Retroactive Sentencing Worksheet prepared by the Probation office.

² In October 2015, Hawthorne requested and received a sentence reduction pursuant to U.S.C. § 3582(c)(2) and the United States Sentencing Commission's retroactive two-level reduction Guideline Amendment 782. The parties stipulated that the retroactive amendment and two-level reduction to the drug quantity table in USSG § 2D1.1 changed Defendant's Guideline range to 120 months imprisonment.

It's fair to say that the conservative estimate of the crack cocaine that I've used for establishing the base offense level probably understates the quantity of that substance that was brought here.

The evidence reflects that this defendant has a violent past.

And the evidence reflects that this guy traffics in powder cocaine.

He's aware of the difference in penalties and wishes to take advantage of that.

The evidence is that he gave his little brother and the rest of them a gun.

Filing no. 220 at CM/ECF p. 102.

In the exercise of my discretion and considering all the sentencing factors such as protecting the public from further offenses of the offender and general deterrence I am not persuaded that I should grant the *First Step Act* motion. Therefore,

IT IS ORDERED that the Motion to Reduce Sentence under Section 404 of the First Step Act, Filing 260, is denied.

Dated this 31st day of December 2019.

BY THE COURT:

Richard J Kopf

Senior United States District Court